

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Bolero,

Plaintiff

v.

Amanda Jean McCarley,

Defendant

Case No. 2:24-cv-01761-CDS-MDC

Order Remanding to Las Vegas
Justice Court and Denying
Motions as Moot

[ECF Nos. 1, 12, 15, 16]

This is an eviction action that originated in Las Vegas Justice Court between plaintiff Bolero and defendant Amanda McCarley, who removed it to this court on September 19, 2024. ECF No. 1-1. McCarley asserts that this court has federal-question jurisdiction and diversity jurisdiction. *Id.* at 2. McCarley has filed a motion for hearing,¹ however I find this matter suitable for disposition without a hearing. Fed. R. Civ. P. 78; Local Rule 78-1. Because this is a simple summary-eviction matter, the court has determined that there is no subject-matter jurisdiction, so the case is remanded to the Las Vegas Justice Court for further proceedings.

I. Discussion

“Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The burden of establishing federal jurisdiction falls to the party invoking the statute. *Thompson v. McCombe*, 99 F.3d 352, 353 (9th Cir. 1996) (“A party invoking the federal court’s jurisdiction has the burden of proving the actual existence of subject matter jurisdiction.”). A federal court must have subject matter jurisdiction to properly adjudicate a dispute. *See Osijo v. Golden Gate Univ.*, 932 F.2d 973 (9th Cir. 1991) (citing U.S. Const. art. III, § 2). If a court determines it lacks subject matter jurisdiction

¹ McCarley filed a duplicate of this motion the same day titled “affidavit and memorandum of law.” ECF No. 13.

1 over a removed action at any stage of the proceedings, it must remand the action. *See Bruns v.*
 2 NCUA, 122 F.3d 1251, 1257 (9th Cir. 1997) (holding that remand for lack of subject matter
 3 jurisdiction “is mandatory, not discretionary.”); *see* 28 U.S.C.S. § 1447(c) (“If at any time before
 4 final judgment it appears that the district court lacks subject matter jurisdiction, the case shall
 5 be remanded.”).

6 **A. Federal question jurisdiction**

7 There is no federal-question jurisdiction over this action. United States District Courts
 8 have original federal-question jurisdiction “of all civil actions arising under the Constitution,
 9 laws, or treaties of the United States.” 28 U.S.C. § 1331. Federal question jurisdiction exists only
 10 when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.
 11 *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, McCarley is attempting to remove this
 12 case to federal court based on federal question jurisdiction by alleging in her notice of removal
 13 that federal-question jurisdiction exists because “[t]his action involves substantial questions of
 14 federal law, including copyright infringement under 17 U.S. Code § 501 . . .” ECF No. 1-1 at 2. In
 15 McCarley’s statement regarding removal (ECF No. 6), she further alleges that Bolero engaged in
 16 copyright infringement through the “unauthorized use of [her] legally protected name” “to
 17 collect money and conduct various transactions without [her] consent[.]” *Id.* These assertions do
 18 not create a federal question for jurisdictional purposes. Based on the eviction notice for failure
 19 to pay rent and affidavit in opposition to summary eviction attached to McCarley’s notice of
 20 removal (ECF No. 1-1 at 5–9), this is a landlord-tenant dispute arising entirely under state law.
 21 McCarley’s mere references to federal law cannot create a federal question that gives this court
 22 jurisdiction.

23 **B. Diversity jurisdiction**

24 This court also lacks diversity jurisdiction over this case. Diversity jurisdiction requires
 25 complete diversity of citizenship between the parties. 28 U.S.C. § 1332; *see also Morris v. Princess*
 26 *Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001). This means that diversity jurisdiction does not

1 exist where any plaintiff is a citizen of the same state as any defendant. Here, McCarley states
 2 that she and Bolero “are citizens of different states, and the amount in controversy exceeds
 3 \$75,000,” ECF No. 6 at 2, but the citizenship attributed to the Bolero apartment complex is
 4 unclear and this statement alone is insufficient to establish diversity of citizenship.

5 Further, federal courts have diversity jurisdiction when there is “complete diversity
 6 among the parties and an amount in controversy in excess of \$75,000.” *Chavez v. JPMorgan Chase &*
 7 Co., 888 F.3d 413, 415 (9th Cir. 2018) (citing 28 U.S.C. § 1441(a)) (emphasis added). Thus, when
 8 removing a case to federal court based on diversity jurisdiction, a defendant must “include only a
 9 plausible allegation that the amount in controversy exceeds the jurisdictional threshold,” and
 10 need not contain evidentiary submissions. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S.
 11 81, 89 (2014). “Where, as here, it is unclear from the face of the complaint whether the amount in
 12 controversy exceeds \$75,000, ‘the removing defendant bears the burden of establishing, by a
 13 preponderance of the evidence, that the amount in controversy exceeds the jurisdictional
 14 threshold.’” *Id.* at 416 (quoting *Urbino v. Orkin Servs. of Cal., Inc.*, 726 F.3d 1118, 1121–22 (9th Cir.
 15 2013)). In McCarley’s statement regarding removal, she alleges that the amount in controversy
 16 exceeds \$75,000 due to her counterclaims for “damages sought from [Bolero’s] unauthorized use
 17 of [her] legal name, alongside the breach of contract claims.” ECF No. 6 at 2. However, in a
 18 diversity case, the amount in controversy should be derived from the complaint itself. See
 19 *Pachinger v. MGM Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 363 (9th Cir. 1986) (“The amount in
 20 controversy is normally determined from the face of the pleadings.”). I agree with the position
 21 that a counterclaim cannot be used to satisfy the amount in controversy requirement to
 22 establish removal jurisdiction in this case. Indeed, federal jurisdiction may not be based on a
 23 claim raised as a defense or a counterclaim, whether actual or anticipated. *Takeda v. Nw. Nat. Life*
 24 *Ins. Co.*, 765 F.2d 815, 821–22 (9th Cir. 1985) (holding federal question jurisdiction does not arise
 25 from defenses or counterclaims alleged by defendant). The allegations in the removal documents
 26 fail to satisfy the requirement of diversity jurisdiction.

1 II. Conclusion

2 Due to lack of subject-matter jurisdiction, the court must remand this action. It is
3 therefore ordered that McCarley's application to proceed in forma pauperis [ECF No. 1], motion
4 for hearing [ECF No. 12], motion for sanctions [ECF No. 15], motion for sanctions and default
5 judgment [ECF No. 16] are DENIED as moot.

6 The Clerk of Court is kindly directed to remand this action (Case No. 24E030749 and
7 Case No. 24E036894) to the Las Vegas Justice Court, LVJC Civil Evictions and to close this case.
8 No other documents may be filed in this now-closed case.

9 Dated: November 13, 2024

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11 Cristina D. Silva
12 United States District Judge
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